

2. Appellants, Lawrence Opthof and Margaret Opthof, are citizens, taxpayers, and owners of certain real estate at 2700 Redington Road, Lower Saucon Township, Hellertown, Northampton County, Pennsylvania 18055.

3. Appellants, Robert McKellin and Cynthia McKellin, are citizens, taxpayers, and owners of certain real estate at 2166 Kistler Avenue, Lower Saucon Township, Bethlehem, Northampton County, Pennsylvania 18015.

4. Appellant, Catherine Michelle Snyder, is a citizen, taxpayer, and owner of certain real estate at 118 E. High Street, Hellertown, Northampton County, Pennsylvania 18055.

5. Appellee, Lower Saucon Township, is a township of the second class, organized and existing under the Second Class Township Code, with principal offices located at 3700 Old Philadelphia Pike, Lower Saucon Township, Bethlehem, Northampton County, Pennsylvania 18015.

6. On August 30, 2023, Lower Saucon Township Council adopted Ordinance No. 2023-05 amending and revising the Code of the Township of Lower Saucon Township Ordinances by amending Chapter 180 of its Code of Ordinances to revise the Zoning Map by changing approximately 275.70 acres of land from RA zoning designation to LI zoning designation and to permit landfills and waste disposal facilities as a permitted use in the LI Zoning District, as well as other amendments to the Zoning Ordinance pertaining to landfills and waste disposal facilities.

7. A copy of the aforesaid Ordinance is attached hereto, made a part hereof, and marked Exhibit "A."

8. Appellants herein assert that Appellee failed to comply with the procedural requirements for a Zoning Ordinance and Zoning Map adoption as set forth in the Pennsylvania Municipalities Planning Code, Second Class Township Code, and Sunshine Act.

9. This Notice of Appeal is filed within thirty (30) days after the intended effective date of the Ordinance amendments as required by law. 42 Pa.C.S.A. §5571.1(b).

10. It is well established in the Commonwealth of Pennsylvania that a municipal ordinance is void at its inception if the governing body fails to strictly comply with the procedural requirements of the Pennsylvania Municipalities Planning Code. 42 Pa. C.S.A. §5571.1(e).

11. Section 609(b)(1) of the Pennsylvania Municipalities Planning Code provides that, before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice.

12. "Public Hearing" is defined in Section 107 of the Pennsylvania Municipalities Planning Code as:

"Public hearing," a formal meeting held pursuant to public notice by the governing body or planning agency intended to inform and obtain public comment, prior to taking action in accordance with this act.

13. Appellants have, through diligent investigation, sought to secure from Lower Saucon Township, pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., a variety of documents confirming that the procedural requirements of the Pennsylvania Municipalities Planning Code were complied with, however the Right-to-Know Act Request Form filed on August 28, 2023, received a prompt response indicating an

additional thirty (30) days would be required and a response would not be had until September 29, 2023, too late to fully articulate procedural objections in a timely manner, hence Appellants reserve the right to raise additional procedural requirements not herein set forth upon receipt of Township response. See Exhibit "B" attached hereto.

14. Based upon the facts and for the reasons set forth herein, and those to be adduced from the Township's response to the Right-to-Know Request as set forth in Paragraph No. 13, Appellants aver that the proceedings before Lower Saucon Township prior to enactment of Ordinance No. 2023-05 were not conducted as "public hearings" and did not conform to the legal requirements of the Pennsylvania Municipalities Planning Code, Second Class Township Code, and Sunshine Act.

15. Appellants aver that Lower Saucon Township invoked Resolution No. 75-2022, a copy of which is attached hereto, made a part hereof, incorporated herein, and marked Exhibit "C," generally, however specifically stifled, limited, and circumscribed comment as follows:

- A. Limited comment to only residents and taxpayers of Lower Saucon Township.
- B. Excluded citizens not residents and taxpayers of Lower Saucon Township, who would be affected by adoption of the Ordinance, including residents of adjoining municipalities living nearby.
- C. Excluded comments from other municipalities whose interests are directly affected by adoption of Ordinance No. 2023-05.
- D. Limited comments by any individual to only three (3) minutes.

E. Scheduled public hearing during a workday thus excluding the possibility of those who are employed from providing public comment which was contrary to how Lower Saucon Township Council has handled any other legislative matters. The public hearing was advertised to commence at 9:00 A.M., however actually did not begin until over two (2) hours after the advertised time and members of the public were unable to stay and provide comment.

F. Established, during the course of the hearing, a hostile, intimidating, and chilling environment towards citizens opposed to adoption of the Ordinance.

G. Precluded the offering of expert testimony, which could not be limited to three (3) minutes, on the subjects of hydrogeology, geology, landfill design, urban planning, history, and archeology.

16. Although Resolution No. 75-2022 indicates that Council recognizes that public participation in the public hearing process is intended to afford citizens an opportunity to comment on the important matters being considered by Lower Saucon Township Council, and as a strong advocate of free speech and wished to promote an atmosphere of reasoned expression of ideas, by limiting comment to three (3) minutes, precluding comment from anyone other than a Township resident or taxpayer, and creating a hostile environment as set forth above, Lower Saucon Township Council denied "public comment" and therefore the proceeding prior to adoption of Ordinance No. 2023-05 was not a "public hearing," the public not having been given an opportunity to be heard, and therefore adoption of the Ordinance is procedurally deficient and ought to be deemed void ab initio.

17. The Sunshine Act, 65 Pa. C.S. §710.1(a) requires political subdivisions such as Lower Saucon Township to provide a “reasonable opportunity to residents or taxpayers to comment on matters of concern, official action, or deliberation.”

18. The topic of consideration involved a matter of great public concern, i.e. the rezoning of 275 acres of land currently substantially encumbered by a scenic and conservation easement and woodland easement to allow landfill activity thereon as a permitted use, is a subject not capable of 3-minute comments. Lower Saucon Township Council was aware that expert testimony was available and poised to be presented on topics involving hydrogeology, geology, landfill design, urban planning, history and archeology, as well as impact upon the Lehigh and Delaware Canal Corridor. This expert testimony would have demonstrated why the adoption of Ordinance No. 2023-05 was inconsistent with sound and rational land use planning, was not rational zoning, and why the rezoned property was not appropriate for the uses to be permitted as of right under Ordinance No. 2023-05. Limitation of three (3) minutes on a matter involving scientific, engineering, and environmental impact protected by Article I, Section 27, of the Constitution of the Commonwealth of Pennsylvania, does not afford “public participation” and allowance of sufficient “comment on matters of concern,” as contemplated by the Sunshine Act and the procedures implemented by Lower Saucon Township constituted willful or wanton disregard of the requirements thereof. During the meeting of August 30, in addition to the adoption of Ordinance No. 2023-05, Council also voted to revise the aforesaid Easements from landfill restrictions.

19. A public hearing on a proposed amendment to a Zoning Ordinance under Section 609 of the Pennsylvania Municipalities Planning Code is “legislative in nature, intended to give members of the public the opportunity to air their views to the governing body on the proposal.” *Perin vs. Board of Supervisors of Washington Township*, 563 A.2d 576 (Pa. Comm. 1989). The limitations set forth above deprived residents, taxpayers, and other interested parties of the full opportunity to be heard and express their views on the proposed rezoning, thereby depriving Appellants and the public of a public hearing and procedural due process afforded under the Constitutions of the Commonwealth of Pennsylvania and the United States of America, and the laws of the Commonwealth of Pennsylvania.

20. Appellants aver that Lower Saucon Township Council did not conduct a lawful public hearing insofar as members of the public were not permitted to air their views fully and support them with expert testimony and documentary evidence in light of the limitations imposed. Accordingly, Lower Saucon Township failed to comply with the procedural requirements of the Pennsylvania Municipalities Code and Ordinance No. 2023-05 ought to be deemed void ab initio.

21. Appellants have a substantial interest in the adoption of the aforesaid Ordinance, said Ordinance has an adverse and direct effect upon their respective property interests and property rights, including but not limited to their peaceful enjoyment and use of their property.

22. The adoption of the aforesaid Ordinance imposes actual harm to property owners abutting or in close proximity to the 275.7 acres rezoned, affecting health, safety, and welfare of Appellants and the Lower Saucon Township community.

23. Where a governing body fails to substantially comply with applicable procedural requirements in the enactment of a municipal zoning or land use ordinance, an unconstitutional deprivation of due process occurs. Appellants aver that they, along with the citizens of Lower Saucon Township and other lawful parties, have been deprived of due process as a result of the deficiencies as set forth above.

WHEREFORE, Appellants request that the Court enter an Order finding that the adoption of the Ordinance amendments by the Appellee deprived Appellants of procedural due process, were violative of the requirements of the Pennsylvania Municipalities Planning Code, Second Class Township Code (which incorporates the Sunshine Act), and Sunshine Act, and for the other legal reasons as set forth above, that Ordinance No. 2023-05 be deemed void ab initio, and grant such any and all other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



GARY NEIL ASTEAK, ESQUIRE

ID: 19233

726 Walnut Street

Easton, PA 18042

(610) 258-2901

asteaklaw@gmail.com

Attorney for Appellants

VERIFICATION

We, Bruce Petrie and Ginger Petrie, being duly sworn according to law, depose and say that the facts set forth in the foregoing Notice of Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: Sept. 13, 2023



BRUCE PETRIE

DATED: Sept. 13, 2023



GINGER PETRIE

VERIFICATION

We, Lawrence Opthof and Margaret Opthof, being duly sworn according to law, depose and say that the facts set forth in the foregoing Notice of Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: Sept. 15, 2023

Lawrence Opthof

LAWRENCE OPTHOF

DATED: Sept. 15, 2023

Margaret Opthof

MARGARET OPTHOF

VERIFICATION

We, Robert McKellin and Cynthia McKellin, being duly sworn according to law, depose and say that the facts set forth in the foregoing Notice of Appeal are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: Sept. 14, 2023



ROBERT McKELLIN

DATED: Sept. 14, 2023



CYNTHIA McKELLIN

VERIFICATION

I, Catherine Michelle Snyder, being duly sworn according to law, depose and say that the facts set forth in the foregoing Land Use Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: September 14th, 2023


CATHERINE MICHELLE SNYDER

LOWER SAUCON TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 2023-05

AMENDMENTS TO THE CODE OF THE TOWNSHIP OF LOWER SAUCON

AN ORDINANCE OF THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY, PENNSYLVANIA, AMENDING AND REVISING THE CODE OF THE TOWNSHIP OF LOWER SAUCON BY AMENDING CHAPTER 180 (ZONING) TO REVISE THE ZONING MAP BY CHANGING THE ZONING DESIGNATION OF APPROXIMATELY 275.70 ACRES OF LAND (SEVEN (7) NORTHAMPTON COUNTY TAX MAP PARCELS) FROM A RURAL AGRICULTURAL (RA) ZONING DESIGNATION TO A LIGHT INDUSTRIAL (LI) ZONING DESIGNATION, THE IDENTIFIED ACREAGE BEING LOCATED IN THE NORTHERN GEOGRAPHICAL AREA OF THE TOWNSHIP (IN THE VICINITY OF THE BETHLEHEM LANDFILL LOCATED AT 2335 APPLEBUTTER ROAD) TO THE NORTH OF APPLEBUTTER ROAD, EAST AND SOUTHEAST OF THE VILLAGE KNOWN AS STEEL CITY, SOUTH OF THE LEHIGH RIVER, AND WEST AND SOUTHWEST OF REDINGTON ROAD; REVISING SECTION 180-79.A(2) AND APPENDIX "A" TO ADD THE "LANDFILLS AND WASTE DISPOSAL FACILITIES" USES TO THE LIST OF PERMITTED USES IN THE LIGHT INDUSTRIAL (LI) ZONING DISTRICT; REVISING SECTION 180-80.B AND APPENDIX "A" TO REMOVE THE "LANDFILLS AND WASTE DISPOSAL FACILITIES" USES FROM THE LIST OF USES REQUIRING SPECIAL EXCEPTION APPROVAL; REVISING SECTIONS 180-101 AND 180-109.F AND APPENDIX "A" TO EXEMPT THE "LANDFILLS AND WASTE DISPOSAL FACILITIES" USES FROM THE SITE PLAN APPROVAL PROCESS AND REQUIREMENTS IF THE USE WILL REQUIRE LAND DEVELOPMENT APPROVAL UNDER THE LOWER SAUCON TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE AND A PERMIT FROM THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND ADDING SECTION 180-109.G TO PROVIDE FOR A NATURAL RESOURCE MITIGATION ALTERNATIVE IN THE LIGHT INDUSTRIAL (LI) DISTRICT; AND REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS CONTAINED HEREIN.

WHEREAS, Lower Saucon Township is a Township of the Second Class, Optional Plan of Government, located in Northampton County, Commonwealth of Pennsylvania; and

WHEREAS, the Township of Lower Saucon adopted Ordinance # 98-17 on May 20, 1998, enacting the Code of the Township of Lower Saucon (hereinafter referred to as the "Code"); and

WHEREAS, the Council of Lower Saucon Township desires to amend the Code of the Township of Lower Saucon to revise the Township Zoning Map to increase the size of the Light Industrial (LI) Zoning District; to allow landfill and waste disposal uses/facilities as a permitted use in the Light Industrial (LI) Zoning District instead of requiring special exception approval; to exempt landfills and waste disposal uses/facilities from the site plan approval process and requirements if the use will require land development approval under the Lower Saucon Township Subdivision and Land Development Ordinance and a permit from the Pennsylvania Department of Environmental Protection; and to create a natural resource mitigation alternative for industrial users proposing to exceed the otherwise permitted disturbance of natural resources in the Light Industrial (LI) Zoning District; and

WHEREAS, the Council of Lower Saucon Township has determined that the adoption of this Ordinance containing the described amendments to the Zoning Map and text of the Zoning Chapter of the Code is in the best interest of the public health, safety, and welfare of the citizens of Lower Saucon Township.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Township of Lower Saucon, Northampton County, Commonwealth of Pennsylvania, that the provisions of the Code of the Township of Lower Saucon are hereby amended and revised as follows:

Section 1. Amendment to Chapter 180 (Zoning), Section 180-15 (Zoning Map), Subsection A.

The Zoning Map of the Township of Lower Saucon is amended in accordance with the revisions noted on the map attached hereto and incorporated herein by reference as Exhibit "A". Specifically, approximately 275.70 acres of land are being changed from Rural Agricultural (RA) to Light Industrial (LI). The identified acreage consists of seven (7) Northampton County Tax Map Parcels which are listed on Exhibit "B", attached hereto and incorporated herein by reference. The identified acreage is located in the northern geographical area of the Township (in the vicinity of the Bethlehem Landfill located at 2335 Applebutter Road) to the north of Applebutter Road, east and southeast of the village known as Steel City, south of the Lehigh River, and west and southwest of Redington Road. The Township Manager is directed to update the Zoning

Map to change the seven (7) parcels shown on Exhibits "A" and "B" from Rural Agricultural (RA) to Light Industrial (LI), as reflected on Exhibit "C", attached hereto and incorporated herein by reference.

Section 2. Amendment to Chapter 180 (Zoning), Section 180-79 (Permitted uses), Subsection A(2) (Industrial uses) and Appendix "A" (Permitted, Conditional and Special Exception Land Uses).

Chapter 180, Section 180-79.A(2) of the Code is amended to add a new Subsection (g) as follows:

"(g) Landfills and waste disposal facilities (see §180-109)."

Chapter 180, Appendix "A" of the Code is amended to replace the "S" in the LI column for "Landfills and waste disposal facilities" with a "P".

Section 3. Amendment to Chapter 180 (Zoning), Section 180-80 (Special exception uses), Subsection B (Industrial uses).

Chapter 180, Section 180-80.B of the Code is amended to replace Subsection (3) "Landfills and waste disposal facilities (see §180-109)" with the term "RESERVED".

Section 4. Amendment to Chapter 180 (Zoning), Section 180-101 (Purpose).

Chapter 180, Section 180-101 of the Code is amended to replace the first sentence therein with the following sentence: "This article requires that, unless a use is otherwise specifically exempted from this requirement elsewhere in this Article XVII, before any zoning permit is granted for the use of land or building for certain permitted, conditional and special exception uses, a site plan shall be reviewed by the Planning Commission and reviewed and approved by the Township Council."

Section 5. Amendment to Chapter 180 (Zoning), Section 180-109 (Industrial uses), Subsection F (Additional requirements applying to extraction and processing of natural resources, landfills and waste disposal facilities and waste transfer and recycling facilities) and Appendix "A" (Permitted, Conditional and Special Exception Land Uses).

Chapter 180, Section 180-109.F of the Code is amended to change existing Section 180-109.F(1) (Additional site plan requirements) from 180-109.F(1) to 180-109.F(2), change existing 180-109.F(2) (Standards) to 180-109.F(3), and to add a new Section 180-109.F(1) as follows:

"(1) If a landfill or waste disposal facility will require Land Development approval under the Lower Saucon Township Subdivision and Land Development Ordinance, and a permit from the Pennsylvania Department of Environmental Protection, it is not subject to the site plan approval process and requirements of this

Article XVII or any other Article or provision contained in Chapter 180."

Chapter 180, Appendix "A" of the Code is amended to remove the "X" in the Site Plan column for "Landfills and waste disposal facilities" and replace it with an asterisk ("*"). Appendix "A" is further amended by adding the following language to the "NOTES" section below Note 5: "* See Section 180-109.F(1)".

Section 6. Amendment to Chapter 180 (Zoning), Section 180-109 (Industrial uses).

Chapter 180, Section 180-109 of the Code is amended to add the following Subsection G:

"G. Natural Resource Mitigation Alternative

An applicant proposing to develop an industrial use within the Light Industrial Zoning District shall be exempt from the natural resource protection rates in Section 180-95.B and be permitted to exceed the net buildable site area permitted by Section 180-95.C(2)(c) ("Permitted Net Buildable Site Area"), utilizing a greater area of natural resource protection land than would be otherwise permitted by the Resource Protection Standards contained in Section 180-95 herein ("Excess Resource Utilization"), provided the Applicant dedicates to the Township for preservation an amount of land equal to the Excess Resource Utilization in accordance with the following requirements:

- (1) The Excess Resource Utilization shall be the difference between the resource protection land calculated by the Resource Protection Land formulas in Section 180-95.C(2)(b) ("Resource Protection Land") and the Applicant's proposed resource protection land (which is the difference between the Base Site Area pursuant to Section 180-95.C(2)(a) and Applicant's proposed buildable site area) ("Proposed Resource Protection Land"). The Applicant shall be permitted to dedicate land in excess of what is required if accepted by the Township.
- (2) The Applicant shall provide drawings and calculations clearly showing the Resource Protection Land, the Proposed Resource Protection Land, Applicant's proposed buildable site area, and the Excess Resource Utilization, and noting that it proposes to develop the use in accordance with this Subsection G.
 - (a) An additional plan sheet showing the limits of proposed buildable area and total acreage of existing environmentally protected lands is required.

- (b) Calculations shall be included on the plans that accurately reflect the Permitted Net Buildable Site Area, the Resource Protection Land, the Base Site Area, the Proposed Resource Protection Land, the Excess Resource Utilization, and the minimum amount of land that is required to be dedicated pursuant to this Subsection G.
- (3) The land proposed for dedication does not need to contain the same environmental resources as those resource protection lands on the subject property.
- (4) The land proposed for dedication shall be located within the municipal boundaries of Lower Saucon Township, shall not be within an industrial or commercially zoned area, and shall not contain any natural or man-made features that are inconsistent with the Township's Open Space Action Plan and Policies.
- (5) The land shall be offered for dedication to the Township in either fee simple or via a conservation easement that is acceptable to the Township Council.
- (6) With the approval of the Township Council, land that is currently occupied by a use, but that contains significant natural or historic resources, may be considered for dedication to the Township.
- (7) If the Applicant demonstrates that, after a good faith effort, it was unable to obtain, on commercially reasonable terms and conditions, any or enough property for dedication pursuant to this subsection, the Applicant may meet the requirements of this Subsection G by submitting a fee-in-lieu of dedication in accordance with the calculations in the Lower Saucon Township Subdivision and Land Development Ordinance, Section 145-51.E, with the "tract" referenced in Section 145-51.E therein to mean, for purposes of this Section 180-109.G, the number of acres required to be dedicated pursuant to the calculation in Section 180-109.G(1). The applicable calculated fee-in-lieu of dedication shall only be used by the Township for the purposes authorized by the Township's Open Space plan.
- (8) An applicant choosing to develop an industrial use in accordance with this Subsection G shall demonstrate and make the required dedication and/or fee-in-lieu of dedication payment prior to final land development approval by the Township Council.”

Section 7. Violations and Penalties.

The Violation and Penalty provisions of the Code, where not revised herein, shall remain unchanged.

Section 8. Severability.

The provisions of this Ordinance are severable. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, illegal, or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council of Lower Saucon Township hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional, illegal, or otherwise invalid.

Section 9. Repealer.

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.


Section 10. Effective Date.

The provisions of this Ordinance shall become effective ten (10) days after adoption.

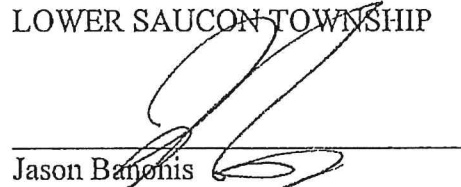
ENACTED and ORDAINED this 30 day of August 2023.

ATTEST:

LOWER SAUCON TOWNSHIP

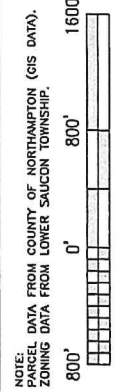
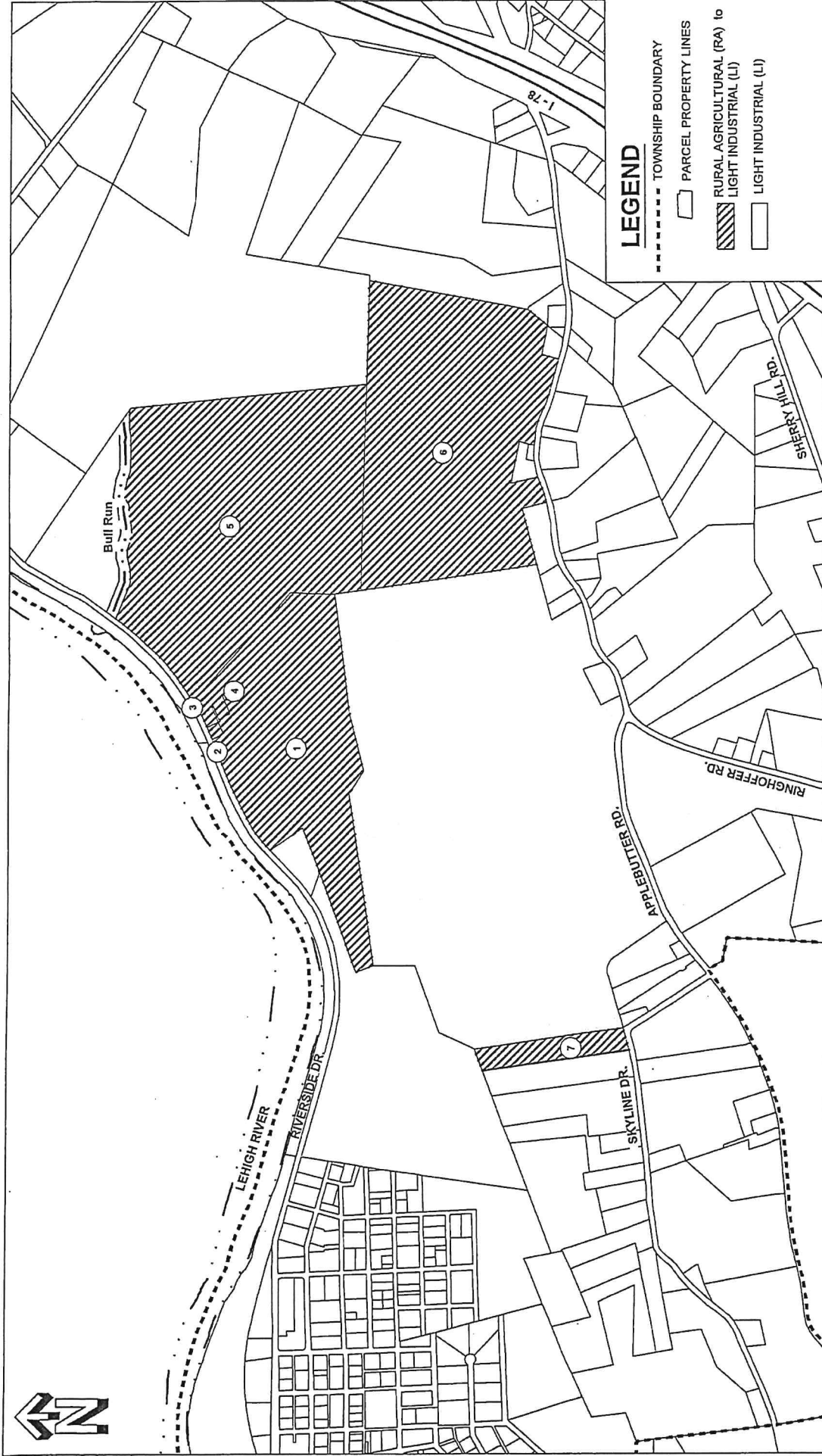


Mark L. Hudson
Township Manager



Jason Banonis
Council President

- Exhibit "A" – Map Amendment (2023), showing parcels proposed to be changed from RA to LI
- Exhibit "B" – List of Parcels for Proposed Map Change (2023), listing parcels proposed to be changed from RA to LI
- Exhibit "C" – Map Amendment (2023), map showing adopted changes to official Zoning Map

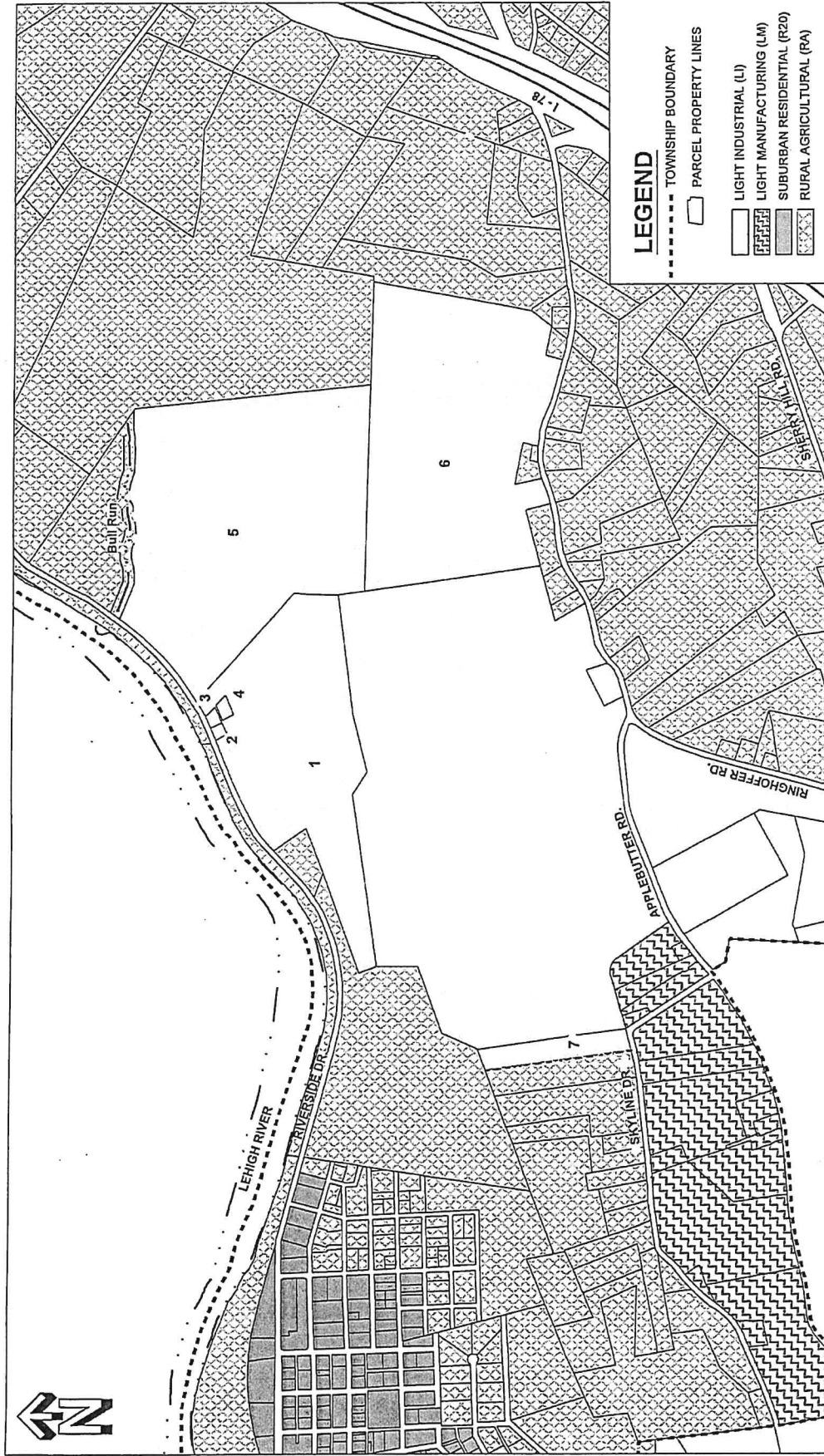


Map Amendment (2023) - Exhibit A
Proposed Zoning Map Change - Rural Agricultural (RA) to Light Industrial (LI) (Parcels 1-7*)
 * see list of parcels on Exhibit B

Exhibit B - List of Parcels for Proposed Map Change (2023)

NO.	NORTHAMPTON COUNTY TAX MAP PARCEL NUMBER	LOCATION / STREET ADDRESS	ACRES
1	N8 14 1 0719E	RIVERSIDE DRIVE	60.60
2	N8 14 1A 0719	2390 RIVERSIDE DRIVE	0.30
3	N8 14 1B 0719	2396 RIVERSIDE DRIVE	0.50
4	N8 14 1B 0719	2396 RIVERSIDE DRIVE	0.50
5	N8 14 2 0719E	RIVERSIDE DRIVE	118.70
6	N8 14 15 0719	APPLEBUTTER ROAD	89.30
7	P7 5 33 0719 (portion of)	APPLEBUTTER ROAD	5.80

APPROXIMATE TOTAL:	275.70
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Map Amendment (2023) - Exhibit C

NOTE: DATA FROM COUNTY OF MORGANTOWN (GIS DATA).
ZONING DATA FROM LOWER SAUCON TOWNSHIP.



Lower Saucon Township

3700 Old Philadelphia Pike, Bethlehem, PA 18015 610-865-3291 Fax 610-867-3580

Right-To-Know Law Extension Notice

September 1, 2023

Mr. Gary Asteak, Esq.
726 Walnut Street
Easton, PA 18042

Re: Right-to-Know Request #1767

Dear Mr. Asteak:

Thank you for writing to Lower Saucon Township to request records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* On August 28, 2023, you requested records as described on the Right-to-Know Request Form (see attached).

Pursuant to Section 902(a) of the RTKL, an additional 30 days are required to respond because:

- The request requires redaction in accordance with Section 706 of the RTKL.
- The request requires the retrieval of a record stored in a remote location.
- A timely response cannot be accomplished due to bona fide staffing limitations.
- A legal review is needed to determine whether the record is subject to access.
- The requester has not complied with the Agency's policies regarding access to records.
- The requester refuses to pay applicable fees authorized by the RTKL.
- The extent or nature of the request precludes a response within the required time period.

Lower Saucon Township expects to respond to your request on or before *September 29, 2023*.

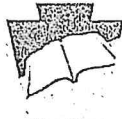
Respectfully,

Mark L. Hudson
Right-to-Know Officer

MLH/cs

Enclosure

Exhibit "B"



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: LOWER SAUCON TOWNSHIP (Attn: AORO)

Date of Request: 08/25/2023 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Gary Asteak, Esquire Company (if applicable): _____

Mailing Address: 726 Walnut Street

City: Easton State: PA Zip: 18042 Email: asteaklaw@gmail.com

Telephone: (610) 258-2901 Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

SEE, "ATTACHMENT TO RIGHT-TO-KNOW REQUEST OF GARY ASTEAK, ESQUIRE DIRECTED TO THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY DATED AUGUST 25, 2023"

- DO YOU WANT COPIES?** Yes, printed copies (default if none are checked)
 Yes, electronic copies preferred if available
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.
Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: 1767 Date Received: 8/28/23 Response Due (5 bus. days): 9/5/23

30-Day Ext.? Yes No (If Yes, Final Due Date: 9/29/23) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

Rachelle Markovic

From: Victoria Home <victoriaopthof@yahoo.com>
Sent: Friday, August 25, 2023 9:50 PM
To: Info; Manager
Cc: Asteak Law
Subject: RTK request time sensitive
Attachments: GARY ASTEAK RIGHT TO KNOW REQUEST TO LOWER SAUCON TOWNSHIP 8-25-23.pdf

Hello Mark,
Please see attached RTK on behalf of attorney Asteak.

Please note Attorney Asteak on behalf of residents in Lower Saucon demand the release of this material prior to Wednesday's meeting, as such material and communications were developed without public input or knowledge prior to today's meeting agenda release. Furthermore, such material are necessary for the public to have full disclosure of all relevant material prior to any council action to comply with sunshine requirements.

As attorney Asteak states:

REQUESTER REQUESTS THAT THE REQUESTED RECORDS BE PRODUCED FORTHWITH, AS THEY ARE RELEVANT TO THE TOWNSHIP PROPOSED ACTIONS AS SET FORTH IN THE MEETING AGENDA FOR THE TOWNSHIP COUNCIL MEETING OF AUGUST 30, 2023 AND THE SCHEDULED HEARING ON PROPOSED ORDINANCE 2023-05.

Thank you for your prompt attention to this matter.

Victoria Opthof-Cordaro, Esq.
OBO Gary Asteak, Esq

Sent from my iPhone

**ATTACHMENT TO RIGHT-TO-KNOW REQUEST OF GARY ASTEAK, ESQUIRE
DIRECTED TO THE TOWNSHIP OF LOWER SAUCON,
NORTHAMPTON COUNTY. DATED AUGUST 25, 2023**

TO: OPEN RECORDS/RIGHT-TO-KNOW OFFICER, LOWER SAUCON TOWNSHIP

Lower Saucon Township Open Records Officers
Mark Hudson, Township Manager
Cathy Gorman, Assistant Township Manager/Director of Finance
Lower Saucon Township
3700 Old Philadelphia Pike
Bethlehem, PA 18015

Via Email: info@lowersaucontownship.org

REQUESTER:

Gary Asteak, Esquire
726 Walnut Street, Easton, PA 18042
Email address: asteaklaw@gmail.com

REQUESTED RECORDS:

1. Copies of all records and communications with any person referring or relating to the revised Host Community Agreement (including all drafts thereof) and proposed resolution 58-2023 which are referenced in the Lower Saucon Township Council meeting agenda for August 30, 2023.
2. Copies of all records and communications with any person referring or relating to the “new conservation easements” and the “lifting of the restrictions on landfill use for the former Helms and Reddington properties” as referenced in the Lower Saucon Township Council meeting agenda for August 30, 2023.
3. Copies of all records and communications with any person relating to proposed zoning ordinance amendments Ordinance 2023-05 and the subject matter thereof to the extent not previously and actually produced in response to other Right to Know Law requests submitted by Mr. Bruce Petrie.
4. Copies of all time records, invoices, bills, vouchers, or other financial statements reflecting charges for or payment of legal work of the Township Solicitor prepared since December 21, 2022 relating: (a) to the Bethlehem Landfill; (b) Ordinance 2022-02; (c) proposed Ordinance 2023-05; (d) the proposed revised Host Community Agreement referenced in the Lower Saucon Township Council meeting agenda for August 30, 2023; and (d) the “new conservation easements” and “lifting of the restrictions on landfill use for the former Helms and Reddington properties” as referenced in the Lower Saucon

Township Council meeting agenda for August 30, 2023, to the extent not previously and actually produced in response to other Right to Know Law requests submitted by Mr. Bruce Petrie.

Please note that any claim of attorney-client privilege and redactions of records based on a claim of such privilege must be limited to attorney-client communications or work-product privilege and redacting only attorney-client communications in accordance with applicable case law or work-product disclosing the attorney's "conclusions, legal theories, legal research, and opinions" in accordance with applicable Open Records Act caselaw, including but not limited to *Bayne v. Lower Burrell City*, Docket No. AP 2022-2709.

"In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citations omitted)." *Bayne v. Lower Burrell City, supra*.

"The attorney work-product doctrine, on the other hand, prohibits disclosure 'of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.' Pa.R.C.P. 4003.3. 'The purpose of the work product doctrine is to protect the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation.'" *Bousamra*, 210 A.3d at 976. *See also, Kane v. Delaware County District Attorney's Office*, Docket No: AP 2022-1673 (*Bousamra* quoted)

See also, *Slusaw v. Hoffman*, 861 A.2d 269, 272-73 (Pa. Super. 2004) (holding that production of evidence from attorneys regarding meetings and telephone calls would not violate attorney-client privilege where it would not call for disclosure of confidential communications).

Moreover:

"In considering the distinction between unprotected general descriptions of legal services and non-disclosable descriptions that would reveal protected information, we reasoned:

Although the general descriptions such as drafting a memo, making telephone call, performing research, observing a trial, reflect work performed, without further detail[] they do not reveal an attorney's mental impressions, theories, notes, strategies, research and the like. Disclosure of the general tasks performed in connection with the fee charged reveals nothing about litigation strategy. They simply explain the generic nature of the service performed and justify the charges for legal services rendered.

Where, as here, the taxpayers are footing the bill for the legal services, they are entitled to know the general nature of the services provided for the fees charged. Thus, we conclude such rote entries regarding the general nature of legal services performed are not entitled to protection under the work[]product doctrine. *Levy III*, 94 A.3d at 444 (internal citations and footnote omitted).

Couloumbis v. Senate of Pennsylvania, No. 160 C.D. 2022, 2023 WL 4607246, at *7 (Pa. Commw. Ct. July 18, 2023).

“Pursuant to the *Levy* decisions, general descriptions of legal services, *i.e.*, that a lawyer made a telephone call, had a meeting, or sat in conference with other lawyers or the client, are not protected and may not be redacted from attorney invoices or engagement letters.”

Couloumbis v. Senate of Pennsylvania, supra, No. 160 C.D. 2022, 2023 WL 4607246, at *8.

REQUESTER REQUESTS A PRIVILEGE LOG IF ANY PORTION OF THE REQUESTED RECORDS ARE WITHHELD OR REDACTED ON THE BASIS OF PRIVILEGE.

REQUESTER REQUESTS THAT THE REQUESTED RECORDS BE PRODUCED FORTHWITH, AS THEY ARE RELEVANT TO THE TOWNSHIP PROPOSED ACTIONS AS SET FORTH IN THE MEETING AGENDA FOR THE TOWNSHIP COUNCIL MEETING OF AUGUST 30, 2023 AND THE SCHEDULED HEARING ON PROPOSED ORDINANCE 2023-05.

LOWER SAUCON TOWNSHIP
Northampton County, Pennsylvania

RESOLUTION #75-2022

**A RESOLUTION OF THE COUNCIL OF LOWER SAUCON TOWNSHIP ADOPTING
PROCEDURES FOR LEGISLATIVE PUBLIC HEARINGS**

WHEREAS, Lower Saucon Township is a Township of the Second Class, Optional Plan of Government, located in Northampton County, Pennsylvania, and is governed by an elected Council; and

WHEREAS, the Council of Lower Saucon Township is authorized to promulgate rules and regulations for legislative public hearings to be conducted by Council; and

WHEREAS, the Lower Saucon Township Council is authorized to establish a level of civility and promote an atmosphere of reasoned expression of ideas in promulgating rules and regulations for its public hearings; and

WHEREAS, the Council recognizes that public participation in the public hearing process is intended to afford citizens an opportunity to comment on the important matters being considered by the Lower Saucon Township Council; and

WHEREAS, the Council is strong advocate of free speech and wishes to promote an atmosphere of reasoned expression of ideas.

NOW, THEREFORE, BE IT RESOLVED that the Council of Lower Saucon Township establishes the following rules and regulations regarding legislative public hearings and conduct:

1. These Procedures are intended to maintain proper decorum for the hearing, participation, and respect for all citizens and to maintain order.
2. These Procedures for legislative public hearings shall be posted on the Lower Saucon Township website.
3. Signs will be posted at the meeting location advising people attending the meeting of the hearing procedures.
4. Legislative public hearings are designed to allow residents and taxpayers in Lower Saucon Township to express comments regarding the subject matter of the public hearing. Legislative public hearings are not quasi-judicial public hearings; and these rules and quasi-judicial public hearings, such as Zoning Hearing Board or Conditional Use hearings, shall be conducted according to the laws applicable in those instances.
5. Responses to public comment/testimony or questions will not be provided during the hearing, other than to clarify facts related to the subject matter. Public hearings of this nature are a one-way conversation.

6. The Township Manager, in his/her sole discretion, is authorized to request police presence at the public hearing.
7. No attendee shall obstruct in any way the entrances or exits to the hearing room.
8. A sign-in sheet will be used for order of public comment/testimony.
9. Public participation and comment/testimony shall occur after the subject matter of the hearing has been discussed by Council.
10. Individuals desiring to speak must be sworn in under oath by the Court Stenographer. The oath will take place as a group at the beginning of the hearing using the sign-in sheet. Individuals who speak must give their name prior to speaking and acknowledge that they took the oath. Individuals who arrive later will be required to take the oath prior to speaking.
11. Individuals desiring to testify shall announce their name and municipality of residence prior to testifying.
12. Comment/testimony may be made only by a person who has been recognized by the Council President.
13. Comment/testimony will be limited to no more than three minutes per person.
14. The Council President (or acting Council President) shall, in his or her sole discretion, be permitted to expand the individual comment period by no more than two minutes upon request from the individual. Thereafter, additional time may be allowed only upon motion approved by a majority of Council.
15. Groups of people attending the meeting because of the same subject matter may designate one of the members to speak for the group.
16. No speaker will be allowed to surrender his/her time to any other person, or to call upon other persons for comment/testimony.
17. The resident or taxpayer shall testify from the lectern or other designated space, unless the resident or taxpayer is disabled and/or unable to stand.
18. All public comment/testimony will be addressed to Township Council.
19. Members of the audience may not address other members of the audience, or to argue, speak or yell back and forth at or to each other.
20. In order to facilitate the orderly conduct of the hearing, there shall be no foul or vulgar language used or gestures made during the hearing.
21. Comment/testimony should be substantive and not include any defamatory content and/or personal attacks on the integrity of others whether or not present.
22. Letters may be read during public comment/testimony subject to the allotted three-minute time limit for individual testimony. No extension shall be granted for residents or taxpayers reading a letter during testimony. Any letters cited or read may be submitted to the Township Manager.

23. Copies of any documents and/or materials reviewed or discussed during testimony shall be marked, made available to Council and placed into the record.

24. At all times, each attendee shall respect the point of view of others. No comment disagreeing with another's point of view shall involve a personal attack on the character of others with a different view point.

25. Any conduct disruptive of the hearing and interfering with the business of the hearing, such as talking when not recognized by the Council President (or acting Council President), talking beyond the allotted time and/or the use of a cell phone shall not be tolerated.

26. The Council President (or acting Council President) will rule out of order any speaker or comment which is defamatory, contentious, scandalous, impertinent, redundant or disruptive to the proceedings of the meeting.

27. If the conduct and order of the hearing is no longer maintained, the Council President (or acting Council President) may recess the hearing to restore order so the business of the hearing may be conducted when the hearing resumes.

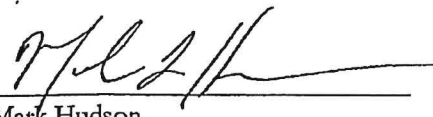
28. Public comment will have no personal attacks of any nature directed toward or against any applicant, respondent, Council person, employees of Lower Saucon Township, members of the audience or any other persons.

29. Legislative public hearings will conclude at 10:00 p.m., unless a majority of Council votes to extend the time deadline. To the extent practicable, any necessary continuation will be discussed at the hearing.

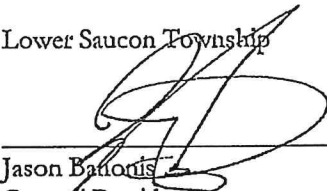
This resolution shall replace the Hearing Procedures established by Township Council on August 21, 2013.

RESOLVED by the Council of Lower Saucon Township this 16th day of November, 2022.

Attest



Mark Hudson
Township Manager

Lower Saucon Township


Jason Batoris
Council President